

STATE AUDITOR'S OFFICE

LEAVE INTERPRETATION 98-03¹

TO: Human Resources Directors

DATE: February 16, 1998

SUBJECT: Whether an employee is entitled to another 15 days of paid military leave if the length of active service crosses two federal fiscal years, and whether it makes a difference if the employee is currently on a leave-without-pay status.

Question:

Is an employee entitled to another 15 days of paid military leave if the length of active service crosses two federal fiscal years? Does it make a difference if the employee is currently on a leave-without-pay status?

Answer:

A state employee is entitled to 15 days of paid military leave for each federal fiscal year, regardless of whether the employee is currently on a leave-without-pay status.

Texas Government Code, Section 431.005, states that a person who is an officer or employee of the State and who is a member of the state military forces, a reserve component of the armed forces, or a member of a state or federally authorized urban search and rescue team is entitled to a paid leave of absence from the person's duties on a day on which the person is engaged in authorized training or duty for not more than 15 work days in a federal fiscal year. During a leave of absence, the person may not be subjected to loss of time, efficiency rating, personal time, sick leave, or vacation time.

Additionally, Texas Attorney General Opinion MW-29 states that a state employee who is engaged in authorized training for duty in the state military forces is entitled to receive compensation for up to 15 working days per year (emphasis added).

The Texas Government Code and the Attorney General's opinion authorize 15 days of paid military leave per federal fiscal year and do not limit this to one time per state employee or per active duty period.

There is nothing in the Texas Government Code that stipulates an employee must currently be on a paid status in order to receive the 15 days of paid military leave. Although employees in other situations may not share the same privileges regarding interrupting a period of leave without pay for paid leave, it would appear the Texas Government Code, as well as the Attorney General's

opinion, specifically provide members of the United States armed forces and reserves entitlements while serving their country.

Unless the employee has submitted his or her resignation, he or she is still considered to be a state employee while out on leave without pay as a member of a reserve branch of the military [Texas Government Code, Section 661.909 (h)].

¹This is an updated version of this State Auditor's Office Leave Interpretation. It was updated in 2011 to primarily reflect statutory changes. The previous version can be found at http://www.hr.sao.state.tx.us/Statutes/LI98-03_old.html